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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KATHLEEN H. HARRIS, an individual
Plaintiff,

vs.

HUMANA, INC., a foreign Corporation;
DOES I through X inclusive, and ROES
CORPORATIONS XI through XX,
inclusive,

Defendants.

Case No:

COMPLAINT FOR:

1. FMLA Retaliation;
2. Disability Discrimination;
3. Race Discrimination;
4. Race Discrimination under NRS 613.330;
5. Intentional Infliction of Emotional Distress; and
6. Negligent Hiring, Supervision, and Training.

[DEMAND FOR JURY TRIAL]

COMES NOW, Plaintiffs, KATHLEEN H. HARRIS, by and through her attorneys of record, **WILLIAM W. McGAHA, ESQ.**, and **JOSHUA SANTERAMO, ESQ.**, of the law offices of **SCHUETZE & McGAHA, P.C.**, and for causes of action against Defendants, and each of them, allege as follows:

I.

PARTIES

1. Kathleen H. Harris ("Plaintiff") was an individual employed by Humana, Inc. ("Humana") from approximately March 2006 through July 19, 2012. Plaintiff is, and was at all times during her employment with the Humana, a resident of the County of Clark, State of

3. Upon information and belief, and at all times relevant hereto, the identities of the Defendants named and/or fictitiously named as DOES I through X and ROES CORPORATIONS XI and XX, are all entities doing business as HUMANA, INC. and/or other names, and each of them were individuals, partnerships, companies, corporations, or other entities that by reason of such relationships with Defendants, and each of them, are jointly and severally responsible and liable for the damages alleged herein. The true names and capacities whether individual, corporate, associate or otherwise of Defendants DOES I through X and ROES CORPORATIONS XI and XX, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and therefore, alleges that each Defendant herein designated as a DOE or ROE is legally responsible in some manner for the events and happenings herein referred to and proximately caused the injury and damages alleged herein. Plaintiff is informed and believes and thereon alleges that DOES I through X and ROES CORPORATIONS XI and XX, inclusive, are residents and citizens of the State of Nevada or are corporations doing business in the State of Nevada. Plaintiff is informed and believes and thereon alleges that Defendants participated in, ratified and/or condoned the acts complained of in Plaintiff's Complaint and the subject matters of this action. Therefore, Plaintiff requests leave of the Court to amend this Complaint to name the Defendants specifically when their true identities become known.

JURISDICTION AND VENUE

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1 Court is invoked under 28 U.S.C. s 1331 to secure protection and redress deprivation of rights
2 guaranteed by federal law, which provide for injunctive relief and other relief for illegal
3 employment discrimination, harassment, and retaliation. The amount in controversy in this
4 action exceeds the jurisdictional limits of this Court. This Court also has jurisdiction over
5 Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

6 5. Venue is proper in the District of Nevada pursuant to 28 U.S.C. Section 1391(b)
7 because the claimed unlawful employment practices were committed in and arose in the
8 District of Nevada , and applicable laws cited herein as the alleged discrimination and damage
9 occurred in this district and the Defendant maintains a place of business in this District.

10 6. Plaintiff, at all times pertinent, is a covered "employee" as defined by 29 U.S.C.
11 § 2611(2), meaning an employee who worked, "for at least 12 months by the employer with
12 respect to whom leave is requested under section 2612 of [FMLA];" and "for at least 1,250
13 hours of service with such employer during the previous 12-month period."

14 7. Defendant Humana, at all times pertinent, is an "employer" as defined by 29
15 U.S.C. § 2611(4), meaning "any person engaged in commerce or in any industry or activity
16 affecting commerce who employs 50 or more employees for each working day during each of
17 20 or more calendar workweeks in the current or preceding calendar year."

18 III.

19 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 8. Plaintiff repeats and re-alleges every allegation made in the paragraphs above,
21 as though set forth fully herein.

22 9. During the time material to this Complaint, Plaintiff was an employee of Humana,
23 working out of their Nevada office located at 770 E. Warm Springs Blvd., Suite 340, Las
24 Vegas, Nevada 89119.

25 10. Plaintiff was hired by Humana in March 2006 as a nurse. She was then
26 transferred to the HSO Department as a case manager in 2008.

27 11. As a case manager, Plaintiff's duties generally consisted of contacting members
28 for post-hospital discharge follow ups and medical records review.

1 12. At all times relevant, Plaintiff performed her job duties satisfactorily and had no
2 serious disciplinary write ups or record of progressive discipline.

3 13. After joining the HSO Department in 2008, Plaintiff initially covered the Nevada
4 area/region. Plaintiff was forced to cover the entire region on her own without assistance.
5 Plaintiff was also given additional responsibilities that other co-workers were not required to
6 perform.

7 14. In approximately 2010, Plaintiff was moved over to the Arizona team.

8 15. Plaintiff was the only African-American member of the Arizona team.

9 16. Other non African-American members of the Arizona team were permitted to
10 work from home five days a week. Plaintiff was forced to come into the office two days a
11 week, while working at home three days a week. Humana refused to explain to Plaintiff why
12 her schedule was different from her non African-American co-workers.

13 17. Plaintiff had previously requested to work from home five days a week like her
14 other co-workers and was denied. Working from home would have helped in reducing
15 Plaintiff's stress and anxiety in the work environment.

16 18. Plaintiff was finally moved again sometime in late 2010 to cover the
17 Intermountain area/region. She was the only staff member to cover this region, and Plaintiff
18 saw her workload greatly increase to the point it was not feasible for her to handle the region
19 alone. Plaintiff was also given additional responsibilities that other co-workers were not
20 required to perform.

21 19. Plaintiff continued to work a schedule of two days in the office and three days
22 at home up through her last day of actual work with Humana.

23 20. In December 2010, Plaintiff was hospitalized with stress-related issues. Her
24 stress-related issues at least partially stemmed from Humana's work environment, work load
25 being the only employee covering the Intermountain region, harassment by supervisors, and
26 disparate treatment by Humana in comparison to her non African-American co-workers.

27 21. In January 2011, Plaintiff began treating with Dr. Donald Mayes and other
28 providers.

1 22. Plaintiff suffers from bi-polar disorder, acute schizophrenia, depression, and
2 anxiety that has been exacerbated by her work environment. Plaintiff has difficulty in her work
3 environment interacting with supervisors and dealing with noise and distractions from co-
4 workers.

5 23. While on a three day at home, two day in the office schedule, Plaintiff was able
6 to manage her condition and work satisfactorily. Plaintiff had been moved to primarily
7 utilization review instead of full case management duties. She sat away from other co-workers
8 when in the office and did not need to see members or patients.

9 24. Plaintiff sought FMLA leave in January 2011, which was approved by Humana
10 related to the aforementioned conditions. Plaintiff's leave began approximately January 18,
11 2011.

12 25. On February 14, 2011, Dr. Mayes provided a Certification of Health Care
13 Provider for Employee's Serious Health Condition indicating the following:

- 14 a. Plaintiff's condition would likely have a duration of three years;
- 15 b. Plaintiff would require more than two visits per year for treatment and
16 would require medication;
- 17 c. Plaintiff's condition impacts her ability to not be distracted at the office,
18 and confrontations with supervisors needed to be greatly reduced;
- 19 d. Plaintiff would be incapacitated through March 18, 2011;
- 20 e. Reduced work would be medically necessary;
- 21 f. Plaintiff could return to work with restrictions on March 18, 2011;
- 22 g. Plaintiff's restrictions would include working a maximum of six (6) hours
23 per day, five (5) days per week until June 1, 2011; and
- 24 h. Further, that if necessary, Plaintiff could request intermittent days off
25 during episodic flare ups.

26 26. Plaintiff expected to return to work with accommodations on March 21, 2011.
27 Plaintiff notified her immediate supervisor, Tracy Pali, of her intention to return by phone on
28 March 16th and March 20th. Pali never returned Plaintiff's calls.

1 27. On March 28, 2011, Plaintiff was informed by Gloria Nichols (Nursing Director
2 for Humana) that she would not be allowed to return to work until she had no work restrictions.
3 No explanation was provided as to why Dr. Mayes' recommended restrictions could not be
4 accommodated from March 18-June 1, 2011. Plaintiff was forced to stay out of work.

5 28. Nichols also informed Plaintiff that if she could not return by the end of her FMLA
6 leave on April 13, 2011, her position "would be posted."

7 29. Nichols also informed Plaintiff that upon her return to work, she would no longer
8 be allowed to work from home three (3) days a week and would now have to work a schedule
9 of five (5) days a week in the office. Plaintiff was never given any explanation as to why she
10 would now have to work in the office full-time.

11 30. A full-time move into the office would undoubtedly exacerbate Plaintiff's
12 psychiatric conditions as she has problems dealing with noise, distractions, and other
13 members in the work place. Plaintiff's position allowed for work from home, and numerous
14 employees worked from home five days per week.

15 31. That no other employees for the HSO department or nurses worked at the office
16 five days per week.

17 32. That Plaintiff's work restrictions from March 18-June 1, 2011 could have been
18 reasonably accommodated, and Humana has failed to articulate why it could not do so and
19 why it persisted in forcing Plaintiff to return without work restrictions, five days per week in the
20 office.

21 33. Plaintiff was kept out of work by Humana and placed on short-term and long-term
22 disability until June 25, 2012.

23 34. Plaintiff was formally terminated by Humana on July 19, 2012. No explanation
24 was given for her termination.

25 35. That in investigating Plaintiff's claims of disparate treatment based upon race
26 and discrimination in violation of the ADA, the EEOC determined that there was reasonable
27 cause to believe that Humana denied a reasonable accommodation. See **Exhibit 1**,
28 Determination Letter.

1 because she is believed to have a physical or mental impairment. The law requires an
2 employer to provide reasonable accommodations to an employee or job applicant with a
3 disability, unless doing so would cause significant difficulty or expense for the employer
4 ("undue hardship"). Further, the law forbids discrimination when it comes to any aspect of
5 employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe
6 benefits, and any other term or condition of employment. Plaintiff has the same rights in every
7 State, among other things, to the full and equal benefit of the laws and proceedings for the
8 security of persons and property as enjoyed by all citizens, and shall, among other things, be
9 subject to like exactions of every kind, and to no other.

10 54. That Plaintiff suffered or was regarded as having suffered from a covered
11 disability in one (or all) of three ways:

- 12 (a) Plaintiff was disabled by way of a mental impairment that substantially
13 limited a major life activity, including concentrating, thinking,
14 communicating, and working;
- 15 (b) Plaintiff has a medically documented mental impairment; and/or
- 16 (c) Plaintiff was regarded as having suffered from a mental impairment that
17 lasted more than six months and was not minor in nature.

18 55. That Plaintiff was a qualified individual who, with or without reasonable
19 accommodation, could perform the essential functions of her employment position.

20 56. That Plaintiff gave adequate notice and certifying documentation from her
21 treating providers of her necessary accommodations for a reduced work schedule, intermittent
22 leave, and requests to work outside the office in manner similar to other non-accommodated
23 employees.

24 57. That the accommodations requested still allowed Plaintiff to perform all the core
25 and essential functions of her employment position without undue hardship to the Defendant.

26 58. That Defendant, without justification or even any stated reason, failed to provide
27 such reasonable accommodations.

28 . . .

60. That Defendant subsequently discharged Plaintiff without justification and in retaliation for her requested accommodations in violation of the ADA.

62. The conduct of Humana described in this Complaint constitutes unlawful discrimination in violation of the Americans with Disabilities Act (ADA).

64. As a further result of Humana's above described actions, Plaintiff has been required to obtain the services of an attorney to prosecute this action, and is therefore entitled to reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

65. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

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FOURTH CAUSE OF ACTION

(Race and National Origin Discrimination Pursuant to NRS 613.330, et. al)

76. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

77. The above discrimination, disparate treatment, harassment, hostile work environment and retaliatory termination by Defendant constitutes unlawful discriminatory employment practices under the Nevada Equal Employment Opportunity Act, NRS 633.310 et seq.

78. As a direct and proximate result of Defendant's discriminatory acts, Plaintiff has suffered and shall continue to suffer monetary damages for the loss of income, mental anguish and violation of her rights unless and until the Court grants relief.

79. Plaintiff has had to engage the services of attorneys to represent her in this matter and is entitled to an award of reasonable attorney's fees.

VIII.

FIFTH CAUSE OF ACTION

(Intentional Infliction fo Emotional Distress Against the Defendant Employer)

80. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

81. The conduct of Defendant Humana, their agents, employees, and/or representatives, was extreme and outrageous and done for the purpose of injuring Plaintiff.

82. The conduct of Defendant, their agents, employees, and/or representatives, was intentional, willful, malicious and outrageous, and therefore, constitutes and intentional infliction of emotional distress to Plaintiff.

83. As a direct and proximate result of Defendant Humana's conduct, Plaintiff suffered severe emotional distress which caused and will continue to cause the Plaintiff extreme mental and nervous pain and suffering.

84. As a direct and proximate result of Defendant's acts and conduct, Plaintiff incurred and continues to incur loss of earnings, and loss of enjoyment of life, all to said

1 Plaintiff's general damages in an amount to be determined, according to proof at the time of
2 trial.

3 85. That Defendant's conduct constitutes intentional, malicious, willful and wanton
4 acts, thereby entitling Plaintiff to punitive damages according to proof to be determined at the
5 time of trial.

6 86. As a further result of Defendant's above described actions, Plaintiff has been
7 required to obtain the services of an attorney to prosecute this action, and is therefore entitled
8 to reasonable attorney's fees and costs.

9 **IX.**

10 **SIXTH CAUSE OF ACTION**

11 **(Negligent Hiring, Supervision, and/or Training of Employees)**

12 87. Plaintiff repeats and re-alleges every allegation made in the paragraphs above,
13 as though set forth fully herein.

14 88. Defendant should have known of the propensity of its supervisors and its
15 employees to cause emotional and financial injury to employees, and therefore has knowledge
16 of their potentially harmful effect upon employees.

17 89. Defendant should have been aware that its employees and supervisors are
18 creating a situation, which places Plaintiff in danger of having her rights violated. Because of
19 this awareness, Defendant should have taken protective measures to stop its employees' and
20 supervisors' illegal conduct toward Plaintiff, specifically in relation to the disparate treatment
21 based upon race, discrimination and retaliation taken against her for exercising leave
22 entitlement under the FMLA, and reasonable accommodations requested under the ADA as
23 described in this Complaint.

24 90. Defendant knew or should known that the conduct of its employees and
25 supervisors, agents and employees might result in a violation of employee's rights. Defendant
26 failed to institute sufficiently effective training programs, which may have identified its
27 supervisors' and employees' illegal conduct and prevented further recurrences of
28 discrimination or may have allowed employees to file complaints about discriminatory conduct.

91. Defendant created an atmosphere whereby discrimination is allowed to pervade and in which the ire of its agents, supervisors and employees was raised, knew that its agents, supervisors and employees might cause emotional and financial injury to a fellow employee and thereby authorizes and ratifies such unlawful and tortuous discriminatory and retaliatory conduct toward Plaintiff.

92. As a result of each supervisor's, employee's and agent's conduct and based upon the responsibility of Defendant, Plaintiff has suffered damages, emotional distress, financial losses, and suffered special, compensatory and punitive damages in an amount subject to proof at trial.

93. Plaintiff has had to engage the services of attorneys to represent her in this matter and is entitled to an award of reasonable attorney's fees.

WHEREFORE, Plaintiffs request relief as follows:

1. Back pay, front pay, benefits, liquidated damages, compensatory damages, statutory and other recoverable damages as allowed by all applicable laws cited herein;
2. Injunctive relief prohibiting future retaliation and enjoining present discrimination;
3. Punitive damages;
4. Attorney's fees and costs as allowed by all applicable laws cited herein;
5. For past and future damages in excess of \$10,000.00;
6. For past and future medical expenses; emotional and mental distress; and special damages in an amount to be proven at trial;

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1 7. For pre-judgment and post-judgment interests; and

2 8. For such other and further relief as the Court deems proper.

3 **DATED** this 18 day of July, 2014.

4 **SCHUETZE & McGAHA, P.C.**

5
6 By 

7 **WILLIAM W. McGAHA, ESQ.**

8 Nevada Bar #3234

9 **JOSHUA SANTERAMO, ESQ.**

10 Nevada Bar #12086

11 601 S. Rancho Drive, Suite C-20

12 Las Vegas, Nevada 89106

13 Attorney for Plaintiffs



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Las Vegas Local Office

333 Las Vegas Blvd. South, Suite 8112
Las Vegas, NV 89101
Las Vegas Direct Dial: (702) 388-5013
TTY (702) 388-5098
FAX (702) 388-5094

Charge No. 487-2011-00634

Kathleen Harris
3157 Color Palette Ave
Henderson, NV 89044

Charging Party

Humana, Inc.
500 West Main Street
Louisville, KY 40202

Respondent

DETERMINATION

I issue the following determination as to the merits of the charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000-e et. seq. ("Title VII") and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101-e et.seq. ("ADA"). Timeliness and all requirements for coverage have been met.

Charging Party alleges she was discriminated against because of her disability and race, African American, in that she was denied a reasonable accommodation upon returning from a leave of absences associated with her disability, in violation of the ADA and Title VII.

Respondent denies the allegations.

The Commission finds that there is reasonable cause to believe that the Charging Party was denied a reasonable accommodation and subsequently discharged, in violation of the ADA.

The Commission makes no finding regarding the Charging Party's allegations of not being reasonably accommodated because of her race, African American, in violation of Title VII.

Respondent is reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in EEOC investigations is also prohibited. These protections apply regardless of the EEOC's determination on the merits of the charge.


Letter of Determination
487-2011-00634
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Section 12117(a) of the ADA requires if the Commission determines that there is reasonable cause to believe that a violation has occurred, it shall endeavor to eliminate the alleged unlawful practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that a violation occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. If the Respondent declines to enter into settlement discussions, or when, for any other reason, a settlement acceptable to the Director is not obtained, the Director will inform the parties in writing and advise them of the court enforcement alternatives available to the Charging Party, aggrieved persons and the Commission.

Should the Respondent have further questions regarding the conciliation process, or the conciliation terms they would like to propose, we encourage the Respondent to contact Investigator Chase White at (702) 388-5056. Should there be no response from the Respondent in fourteen (14) days, please be advised that the EEOC may conclude that further conciliation efforts would be futile or nonproductive.

On behalf of the Commission:

March 26, 2014
Date



Amy Burkholder
Director

EXHIBIT 1

EXHIBIT 2

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: Kathleen H. Harris
3157 Color Palette Ave.
Henderson, NV 89044

From: Las Vegas Local Office
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
487-2011-00634	Chase S. White, Intake Supervisor	(702) 388-5056

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Amy Burkholder,
Local Office Director

JUL -9 2014

Enclosures(s)

(Date Mailed)

cc: Humana Inc.
ATTN: Jennifer Star
500 West Main Street
Louisville, KY 40202

Schuetze & McGaha, P.C.
ATTN: Joshua Santeramo, Esq
601 South Rancho Drive, Suite C-20
Las Vegas, NV 89106